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Written statement* submitted by the European Centre for Law and Justice, Centre Europeen pour le droit, les Justice et les droits de l'homme, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Submission to the Human Rights Council in response to report of the Secretary-General on Human Rights in the Occupied Syrian Golan

The European Centre for Law and Justice (ECLJ) appreciates the opportunity to submit this information with citations, addressing the Secretary-General's report on human rights in the occupied Syrian Golan (A/HRC/25/37) (hereinafter Golan Report). By way of introduction, the ECLJ is a Non-Governmental Organisation dedicated to the promotion and protection of human rights and to the furtherance of the rule of law in international affairs. The ECLJ has held Special Consultative Status before the United Nations' ECOSOC since 2007[1]. The ECLJ is concerned that Israel is being unfairly singled out for special scrutiny and criticism, despite an immeasurably better record of compliance with international law and its norms than many other states which continually elude the Council's attention[2].

The ECLJ will first discuss the applicable international law with respect to acquisition of territory by war, to establish that Israel's control of, and subsequent exercise of sovereign authority over, the Golan Heights is legitimate under international law. Second, the ECLJ will discuss the allegations of human rights abuses leveled by Syrian Arab Republic (hereinafter Syria) against Israel.

International Law Concerning Acquisition of Territory by War:

The UN Charter explicitly forbids the actual or threatened use of force by UN member states against any state[3]. Hence, there is no question that international law forbids aggressive war. Accordingly, the fruits of aggressive war, such as acquisition of another state's territory by means of aggression, are also forbidden.

The UN Charter also recognises a state's inherent right of self-defence[4]. Note that the Charter does not create the right to self-defence; it is an inherent right of all states under customary international law[5]. As such, not every use of military force is forbidden.

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[1]NGO Branch, U.N. Dep't of Econ. & Soc. Affairs, Consultative Status for the European Centre for Law and Justice (2007), http://esango.un.org/civilsociety/ (accessed by searching "European Centre for Law and Justice" in the iCSO Database).

[2]Since 2006, for example, the UNHRC has adopted no fewer than forty-three resolutions alleging various violations against Israel. Such anti-Israel bias has even been noted and condemned by two UN Secretaries-General. For example, shortly after the UNHRC's creation, then-UN Secretary-General Kofi Annan complained: "Since the beginning of [the UNHRC's] work, they have focused almost entirely on Israel, and there are other crisis situations, like Sudan, where they have not been able to say a word." Benny Avni, Annan Criticizes Human Rights Council's Resolutions on Israel, Darfur Crisis, N.Y. SUN, 29 Nov. 2006, http://www.nysun.com/foreign/annan-criticizes-human-rights-councils/44260/. More recently, UN Secretary-General Ban Ki-moon also criticized the UNHRC for singling out Israel: "The Secretary-General is disappointed at the [UNHRC's] decision to single out only one specific regional item, given the range and scope of allegations of human rights violations throughout the world " Press Release, U.N. Secretary-General, Secretary General Urges Human Rights Council to Take Responsibilities Seriously, Stresses Importance of Considering All Violations Equally, U.N. Doc. SG/SM/11053 (20 June 2007).

[3]"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." U.N. Charter art. 2, para. 4. See also UN Charter art. 1, para. 1 (calling for suppression of acts of aggression).

[4]"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations . . . ." U.N. Charter art. 51.

[5]"Article 51 neither creates, nor abolishes, a right of self-defense. Nor, for that matter, does it purport to define one. In fact, by its own terms it appears to be nothing more than a rule of construction—making clear that nothing else in the Charter purports to eliminate the right of self-defense in the face of armed attack". David B. Rivkin, Jr., et al., Preemption and Law in the Twenty-First Century, 5 CHI. J. INT'L L. 467, 476 (2005). Moreover, while the UN Charter recognises the inherent right to self-defence, the responsibility for

Thus, there are legal differences between aggressive and defensive warfare as well as between the consequences that flow therefrom. The state that engages in aggressive war, not the one using similar military force in self-defence, violates international law. It is the aggressor state that must be made to pay for its wrongdoing. Otherwise, a perverse result would obtain—the aggressor would be rewarded for its crime at the expense of the victim. The foregoing principle is key to evaluating the legality of the Israeli presence and claim of sovereignty over the Golan Heights.

Application of International Law to the Golan Heights:

Historically, Syria, despite its clear obligations under the UN Charter not to engage in or threaten aggressive war, has proven over time to be a serial aggressor. In 1948, Syria attacked the newly proclaimed State of Israel, thereby engaging in aggressive war[6]. Syria's attack ultimately failed, and Syria signed an armistice agreement in which it pledged to refrain from future aggressive acts against Israel[7]. Syria violated that agreement continually between 1949 and 1967, using the Golan Heights as a military platform from which to fire indiscriminately into northern Israel[8]. In 1967, Syria allied itself with Egypt and Jordan to attack Israel[9]. When hostilities commenced, Syrian air and ground forces attacked Israeli territory. When the war ended, the Syrian military had been soundly defeated, and Israel had captured the Golan Heights[10]. Between 1967 and 1973, Syria continued to support attacks against Israel and its armed forces. In 1973, yet again, Syria initiated aggressive war against Israel, and once again, the Syrian military was decisively defeated. Israel retained control of the Golan Heights. The wars of 1948, 1967, and 1973 as well as Syria's interwar artillery, small arms, and guerilla (fedayeen) attacks against Israeli territory demonstrate conclusively that Syria has neither repented of its aggressive desires nor acknowledged its wrongdoing. To this day, Syria has shown no genuine desire to recognise Israel or make peace with her. In the final analysis, Syria lost the Golan Heights due to its own ill-considered and unlawful actions. Loss of the Golan Heights is one of the costs of Syria's unprovoked acts of aggression. As such, Syria cannot be rewarded by a return of the Golan Heights to its possession.

Under the circumstances, Israel's legislature saw fit in 1981 to formally apply the laws of the State of Israel to the Golan Heights[11]. Given Syria's unrepentant actions and its history of repeated aggression, Israel's action was a reasonable response and is fully consistent with UN Security Council Resolution 242 (later reaffirmed by Resolution 338) which states the need to establish defensible boundaries for Israel[12].

Because Israel captured the Golan Heights in a defensive war, the prohibition on acquisition of land via aggressive war is not applicable. Moreover, as stated above, returning the territory to Syria would, in fact, reward Syria's prior illegal behavior and encourage such behavior in the future by mitigating the costs of past military and political folly in clear violation of international law. No norm seeking to halt aggressive war can be construed as containing a proviso that subverts its very purpose Interpreting the norm precluding acquisition of territory via aggressive war to also preclude acquisition of territory via defensive war would lead to the absurd result of rewarding the aggressor state for its crime to the detriment of the victim. No rational law would do so, and none has done so. In the case of the Golan Heights, its

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determining when self-defence is appropriate lies, as it always has, with the government of each threatened state. States retain full authority to act unilaterally or collectively in their self-defence as they see fit.

[6]Syria was not alone. Egypt, Lebanon, Iraq, Saudi Arabia, and Jordan also sent forces to attack Israel, but this is not relevant to the present discussion.

[7]General Armistice Agreement art. 1, para. 1–2, Isr.-Syria, 20 July 1949, 42 U.N.T.S. 327 (agreeing to "liquidation of armed conflict," to "no aggressive action by the armed forces-land, sea or air- . . . be[ing] undertaken, planned, or threatened," and to each party's right to "security and freedom from fear of attack").

[8]*See, e.g.*, Permanent Rep. of Israel to the U.N., Letter dated 25 Feb. 1960 from the Permanent Rep. of Israel to the President of the Security Council, ¶¶ 8–12, 18–19, U.N. Doc. S/4271 (25 Feb. 1960).

[9]It should be noted that Egypt's blockade of the Straits of Tiran to Israeli ships and foreign ships bound for the Israeli port of Eilat consituted the causus belli of the 1967 war.

[10]In 1967, Israel also captured the West Bank, the Gaza Strip, and the Sinai Peninsula, but they are not relevant to this discussion.

[11]Golan Heights Law, 5742–1981, 36 LSI 7 (1981–82) (Isr.) (noting that Syria was not willing to negotiate peace with Israel).

[12]S.C. Res. 242, U.N. Doc. S/RES/242 (22 Nov. 1967); S.C. Res. 338, U.N. Doc. S/RES/338 (22 Oct. 1973). Prior to 1967, Syria indiscriminately attacked Israel from the Golan Heights. After Israel captured the Golan Heights, thereby establishing a new de fact border, the incidents of Syrian attacks have been significantly reduced.

return to Syrian rule would mean not only that Syria would benefit from its aggression but it would also create an intolerable security risk for Israel[13]—effectively rewarding the perpetrator while punishing the victim.

Because nothing in international law precludes acquisition of territory pursuant to victory in a defensive war, Israel's acquisition of the Golan Heights is lawful. Since Israel has assumed sovereignty over territory lawfully acquired in defending itself against repeated Syrian aggression, the Golan Heights is not—and, indeed, cannot be—"occupied territory" in the sense of the Fourth Geneva Convention. As such, the allegation that the study involves human rights in "occupied" territory in the "Syrian Golan" is factually and legally incorrect.

Alleged Human Rights Violations in the Golan Heights:

The OHCHR report notes several allegations by Syria of Israeli human rights violations in the Golan Heights. For example, Syria has accused Israel of mistreatment of Syrian prisoners[14], requiring the local population to hold Israeli identity[15], and preventing "Syrian nationals" from travelling to and from Syria[16]. Yet, not one specific example of such mistreatment is cited in the report. Moreover, it is impossible to escape the glaring irony of Syria's accusing Israel of human rights violations. One need only take a cursory look at the widespread atrocities being inflicted on Syrian citizens by their own government. Syria's charges against Israel insult one's intelligence given Syria's open and notorious human rights violations. There can be little doubt that Golan Heights residents of Syrian origin must be grateful that Israel has not relinquished the Golan Heights to Syria, thereby sparing them from the Syrian regime's ongoing massacre of its own people.

Given the well-established, universal legal concept whereby a party with "unclean hands" has no standing to complain about similar conduct of others, this is in itself a wholly sufficient reason to reject Syria's complaints in this matter. Yet, even in the hypothetical case that Syria were able to come with clean hands regarding its human rights record, it would still have no basis under international law to claim that Israel's exercise of sovereignty over the Golan Heights is unlawful, given Syria's repeated criminal conduct in the past.

Since the underlying assumptions in the report are false (e.g., "occupied" and "Syrian" Golan), the Syrian complaints—whether about alleged Israeli human rights violations, settlements, Fourth Geneva Convention violations, and the like—are wholly without foundation.

Conclusion:

In short, Israel's exercise of sovereignty over the Golan Heights is fully consistent with international law. The Golan Heights came under Israeli control as the result of defensive warfare against an undisputed serial aggressor. Israel acquired lawful control of the Golan Heights and has retained proper sovereign authority over the region. Thus, the notes verbales discussed in the OHCHR report—which assume that Israel's exercising sovereign authority over the Golan Heights is unlawful—are in blatant disregard of both law and fact. Nothing in international law requires that the victim in war return to the aggressor territory acquired during the war, all the more so if this entails severely compromising the security of the victim. Aggressors need to count the potential cost before resorting to war. If they can retrieve what they lose even when they violate the law, there is little incentive to avoid going to war the next time. That is a perverse result that international law does not—indeed, cannot—sanction. As such, the underlying assumptions in the OHCHR report upon which most of its findings are based, have no foundation in law or fact.

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[13]Note that the Golan Heights constitutes strategic high ground, which topographically dominates all of northern Israel. Given Syria's history of attacking Israel, Syrian control of the Golan Heights would seriously inhibit Israel's ability to defend its prior de facto borders with Syria.

[14]Golan Report, ¶ 10.

[15]Id. ¶ 9.

[16]Id. ¶ 11. Note that Syria and Israel have still not achieved a peace agreement since 1948 and are, therefore, technically, still at war. As such, Israel is not required to allow free movement of anyone across a hostile nation.